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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,337	10/21/2003	Kenneth J. Juncker	AG-117US	2196
24314	7590	10/21/2005	EXAMINER	
JANSSON, SHUPE & MUNGER & ANTARAMIAN, LTD 245 MAIN STREET RACINE, WI 53403			NOVOSAD, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/690,337	<b>Applicant(s)</b> JUNCKER, KENNETH J.	
	<b>Examiner</b> Christopher J. Novosad	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 11, 19-24, 39 and 41-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11, 19-24 and 39 is/are allowed.
- 6) ☒ Claim(s) 41-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*UP*

## **DETAILED ACTION**

Claims 1-10, 12-18, 25-38 and 40 have been canceled.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 41-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation “large” in claim 41, line 6 and in claim 46, line 6 is indefinite since “large” is a relative term and it is unclear as to exactly what “large” is supposed to be.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 41, 43, 44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clausen in view of Wigoda.

With respect to claims 41 and 46, Clausen shows an earth working scraper and a method of earth scraping comprising a pan 20 structured for being lowered into or raised out of contact with a ground surface, the pan 20 having an interior portion 16,18, the pan 20 comprising:

a scraper blade 26,28 structured for scraping earth from the ground surface; and

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an axle (unnumbered; necessarily present in Fig. 1) for carrying the pan 20;

a rotatable axle wheel (unnumbered) Fig. 1 connected to the axle and having a plurality of spaced-apart drive members (teeth on drive wheel; Fig. 1) along a circumferential edge thereof; and

a track having lugs (Fig. 1) formed along an inner surface thereof, the lugs being configured for meshing engagement with the drive members (teeth on drive wheel, Fig. 1) of the wheel.

As to claim 43, Clausen shows an "idler wheel tensioned against the inner surface of the track." The leading wheel (unnumbered, Fig. 1) of Clausen is an idler wheel, i.e. not a driving wheel, and is shown to be mounted on what appears to be a pivot arm that is pivotally mounted to the frame. The combined weight of the vehicle frame with cab (12), power source (14), and blade attachment (10) acts downwardly on the trailing end of the pivot arm and causes the leading end thereof (rotatably connected to the leading idler wheel) to force the leading idler wheel outwardly (forwardly) relative to the frame such that the idler wheel "is tensioned against the inner surface of the track" as called for in claim 43.

As to claim 44, the tensioning device reads on the pivoting member (unnumbered) to which the leading wheel is rotatably attached. The pivoting member acts as a tensioning device due to the weight of the frame.

The claims distinguish over Clausen in requiring a receiving bin formed in the interior portion adjacent to the scraper blade, the receiving bin for receiving and holding a large volume of the earth scraped by the scraper blade (as required in claims 41 and 46).

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Wigoda shows a receiving bin 18 formed in the interior portion (unnumbered) adjacent to the scraper blade 6,30,36, the receiving bin for receiving and holding a large volume of the earth scraped by the scraper blade 6,30,36.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the receiving bin 18 of Wigoda in place of the conveyor track 16 of Clausen to allow for storage capability of excavated earth.

***Allowable Subject Matter***

Claims 1, 19-24 and 39 are allowed.

Claims 42 and 45 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

October 7, 2005